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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,552	02/20/2004	Joseph F. Hicklin	MWS-111	7454
959 7590 06/07/2007 LAHIVE & COCKFIELD, LLP ONE POST OFFICE SQUARE BOSTON, MA 02109-2127			EXAMINER SKOWRONEK, KARLHEINZ R	
			ART UNIT 1631	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/783,552	<b>Applicant(s)</b> HICKLIN ET AL.	
	<b>Examiner</b> Karlheinz R. Skowronek	<b>Art Unit</b> 1631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7, 12, 13, 18, 19, 24, 25, 30, 31 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-11, 14-17, 20-23, 26-29 and 32-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/8/04; 01/18/06</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of group II (claims 8-13) in the reply filed on 19 March 2007 is acknowledged. The traversal is on the ground(s) that the groups as currently amended are not patently distinct. This argument is found persuasive. Groups I-VI have been rejoined and will be examined. Applicant's election of species Ai reading on claims 5, 11, 17, 29 or 35 is acknowledged. Claims 6, 7, 12, 13, 18, 19, 24, 25, 30, 31, and 36 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

### ***Claim Status***

Claims 1-36 are pending.

Claims 6, 7, 12, 13, 18, 19, 24, 25, 30, 31, and 36 stand withdrawn as being directed to a non-elected species.

Claims 1-5, 8-11, 14-17, 20-23, 26-29, and 32-35 are being examined.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 08 November 2004 and 18 January 2006 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statement.

### ***Objections to the Specification***

The use of the trademarks for a number of microprocessor units from various companies (p. 6 for example, AMD OPTERON and CELERON) has been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

The disclosure is objected to because it contains an embedded hyperlinks and/or other form of browser-executable code, see specification p. 20. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8-11, 14-17, 20-23, 26-29, and 32-35 rejected under 35

U.S.C. 102(a) as being anticipated by Sauro et al (Omics: A Journal of integrative Biology, Vol. 7, No. 4, 2003, Dec 2003).

The claims are directed to a system, computer-implemented method, and computer program product for improved modeling of a biological system, a biological system being a plurality of chemical reactions, comprising modeling component with a graphical user interface to generate a model; a simulation engine accepting the model and generating a dynamic behavior for the biologic system; and an analysis environment to display the dynamic behavior.

Sauro et al show a system, computer-implemented method, and computer program product for improved modeling of a biological system, a biological system being a plurality of chemical reactions, comprising modeling component with a graphical user interface (GUI) to generate a model; a simulation engine accepting the model and generating a dynamic behavior for the biologic system; and an analysis environment to display the dynamic behavior (figure 11). In figure 11 of Sauro et al, the elements of modeling component having a GUI providing means for accepting user input via a tool palette to generate a block diagram of a plurality of related chemical reactions that make a biological system. The figure also depicts an analysis environment displaying the dynamic behavior of the biological system, and a simulation engine. Sauro et al show that the dynamic behavior of the system is modeled using a stochastic computational model (p 355 and 364).

Claims 1-5, 8-11, 14-17, 20-23, 26-29, and 32-35 rejected under 35

U.S.C. 102(b) as being anticipated by Hucka et al (Pacific Symposium on Biocomputing Vol. 7, p.450-461, 2002).

The claims are directed to a system computer implemented method and computer program product for improved modeling of a biological system, a biological system being a plurality of chemical reactions, comprising modeling component with a graphical user interface to generate a model; a simulation engine accepting the model and generating a dynamic behavior for the biologic system; and an analysis environment to display the dynamic behavior.

Hucka et al show a system, computer-implemented method, and computer program product for improved modeling of a biological system, a biological system being a plurality of chemical reactions, comprising modeling component with a graphical user interface to generate a model; a simulation engine accepting the model and generating a dynamic behavior for the biologic system; and an analysis environment to display the dynamic behavior (figures 1 and 2). Hucka et al describe jdesigner, a software providing a GUI to accept user commands and data (sect. 5.2). Jdesigner provides a tool palette aiding in the construction of the of a block diagram model, as is seen in figure 1 (figure 1 and p. 452). As shown in figure 1, the modeling component includes a block diagram of related chemical reactions. Hucka et al show that the simulation engine, generates the dynamic behavior of the system using a stochastic computational model (p. 459, sect 5.8-9).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5, 8-11, 14-17, 20-23, 26-29, and 32-35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5, 8-12, 15-18, 26-30, 33-37, and 40-43 of copending Application No. 10/783,628. Although the conflicting claims are not identical, they are not patentably distinct from each other.

In the instant case, the claims are directed to a system computer implemented method and computer program product for improved modeling of a biological system, a biological system being a plurality of chemical reactions, comprising modeling component with a graphical user interface to generate a model; a simulation engine

accepting the model and generating a dynamic behavior for the biologic system; and an analysis environment to display the dynamic behavior.

In comparison the claims of copending Application No. 10/783,628 are drawn system computer implemented method and computer program product for improved modeling of a biological system, a biological system being a plurality of chemical reactions, comprising modeling component to generate a model; a simulation engine accepting the model and generating a dynamic behavior for the biologic system; and an analysis environment to display the dynamic behavior. This method with specific steps anticipates the method of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-5, 8-11, 14-17, 20-23, 26-29, and 32-35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5, 8-20, 22-27, 30-42, and 44 of copending Application No. 10/783,624. Although the conflicting claims are not identical, they are not patentably distinct from each other.

In the instant case, the claims are directed to a system computer implemented method and computer program product for improved modeling of a biological system, a biological system being a plurality of chemical reactions, comprising modeling component with a graphical user interface to generate a model; a simulation engine



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accepting the model and generating a dynamic behavior for the biologic system; and an analysis environment to display the dynamic behavior.

In comparison the claims of copending Application No. 10/783,624 are drawn system computer implemented method and computer program product for improved modeling of a biological system, a biological system being a plurality of chemical reactions, comprising modeling component to generate a model; a simulation engine accepting the model and generating a dynamic behavior for the biologic system; and an analysis environment to display the dynamic behavior. This method with specific steps anticipates the method of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karlheinz R. Skowronek whose telephone number is (571) 272-9047. The examiner can normally be reached on Mon-Fri 8:00am-5:00pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571) 272-0735. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KRS/

Assistant Examiner, Art Unit 1631

*John S. Brusca 4 June 2007*

**JOHN S. BRUSCA, PH.D.  
PRIMARY EXAMINER**